IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 3860 of 1994

Bhimashankar Chandram Talwar
Age 45 years, Occ: Nil
R/o 231, Telangi Paccha Peth
Solapur ..Petitioner
vs.

1. The Secretary,
   Union of India, Ministry of
   Defence, New Delhi.

2. The Secretary Dominion of
   India, Corps of Signal,
   New Delhi.

3. Signal Abhilekh Karyalaya
   Post Box No.5, Jabalpur

4. CCDA (Pensions) Allahabad
   Pension Sanctioning Authority
   Uttar Pradesh ..Respondents

Shri Shaishail Sakhare for petitioner.
Shri S.S.Pakale with Shri D.A.Dubey for
respondent nos. 1 to 4.

CORAM: S.B.MHASE &
D.G.KARNIK JJ.
24th February, 2006

ORAL JUDGMENT (Per D.G.Karnik J.)

1. Heard.

2. By this petition the petitioner challenges the rejection of his claim for medical disability pension and prays for a writ of mandamus directing the respondents to grant him medical disability pension as applicable under the Pension Regulations for the Army.

3. The petitioner was employed in Corps of Signals on 6th November, 1965. After initial training at Jabalpur, he was posted at Laddakh where he worked for 2 years and then in Kashmir for 4 years, at Hyderabad for 3 years and a Delhi for 3 years. He then was posted at Burma Border for 4 years and at mathura for 3 years. While working at Mathura the petitioner suffered from illness called as "Neurotic Depression". In February 1985 the petitioner suffered another attack of Neurotic Depression and was admitted in Barelli Hospital where he was under treatment for 9 months. The petitioner was adjudged as unfit for army services and was discharged with effect from 12th January, 1986. The petitioner contends that he suffered the attack of Neurotic Depression due to the extreme service conditions in Laddakh, Kashmir and Burma borders and claims medical disability pension as per rules. The petitioner made several representations to the respondents for grant of medical disability pension, however, the claim of the petitioner was rejected purportedly on the ground that the disease, namely, neurotic depression

suffered him was not attributable to service nor was not aggravated by service in the army. The petitioner has, therefore, filed this petition challenging the decision of the respondents rejecting the petitioner's claim for medical disability pension which he claims to be entitled under the pension regulations for the army.

4. It is not disputed that the petitioner joined the army in 1965 and was discharged from the army on 12th January, 1986 on account of neurotic depression. The only point that is contended by the respondents is that the disease "neurotic depression" was not attributable to military services nor was it aggravated by military service and, therefore, the petitioner is not entitled to disability benefit.

5. Learned counsel for the respondents handed over to us the book of Pension Regulations for the Army (1961 edition) and invited our attention to Rule 173 of he Pension Regulations and Appendix II to the Rules. Rule 173 reads as under:

"173. Unless otherwise specifically

> provided, a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20 per cent or over.
>
> The quesion wheher a disability is attributable to or aggravated by military service shall be determined under the rules in Appendix II.

Appendix II (titled as Entitlement Rules) to the Pension Regulations contains the rules regarding the entitlement of disability pension. Rule 2 of the Entitlement Rules reads as under:

> "2.Disablement or death shall be accepted as due to military service provided it is certified that:
>
> (a) the disabldement is due to a wound, injury or diseasel which -
>
> (i) is attributable to military service; or
>
> (ii) existed before or arose during military service and has been and remains aggravated thereby;
>
> (b) the death was due to or hastened by -
>
> (i) a wound, injury or disease which was attributable to military service; or
>
> (ii) the aggravation by military service of a wound, injury or disease which existed before or arose during military service."

Under Rule 2 of the Entitlement Rules, disablement or death shall be accepted as due to military service provided it is certified that (a) the disablement is due to a wound, injury or disease which (i) is attributable to military service; or (ii) existed before or arose during military service and has been and remains aggravated thereby.

Rule 4 of the Entitlement Rules says that for deciding on the issue of entitlement all the evidence, both direct and circumstantial, will be taken into account and the benefit of reasonable doubt will be given to the claimant and that the benefit will be given more liberally to the claimant in field service cases.

6. Rule 7 of the Entitlement Rules inter alia, contains the rules to determine whether the disease is attributable to or aggravated by military service. Clauses (b) and (d) thereof are material and are quoted below.

> "7. In respect of diseases, the following rules will be observed.
>
> (a) (Not produced).
>
> (b) A disease which has led to an individual’s discharge or death will

ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service the disease will not be deemed to have arisen during service.

(c) (Not produced)

(d) In considering whether a particular disease is due to military service, it is necessary to relate the established facts, in the aetiology of the disease, and of its normal development, to the effect that conditions of service e.g. exposure, stress, climate etc. may have had on its manifestation. Regard must also be had to the time factor. (Also see annexure)

(i) Common diseases known to be affected by exposure to weather - Diseases such as Bronchitis, Rheumatism and Nephritis - indeed most diseases of the respiratory system, joints and kidneys are affected by climatic conditions. The period and the conditions of service at any particular place should be taken into account in determining causal connection with service.

(ii) Common diseases known to be affected by stress and strain -- This should be decided with due reference to the nature of the duties and individual has had to perform in military service.It may be that in some cases the individual had been engaged on sedentary duties when they will normally not qualify.

(iii) Diseases endemic to certain areas - Diseases such as Malaria, Kalazar, Filariasis, Dysentery, Cholera etrc. are endemic in certain areas. These diseases may

also be introduced by movements of infected persons. In determining casual connection with service it will have to be established that the conditions of military service exposes the individual to the infection as a result of which he contracted the disease. Where there is medical evidence of the contraction of the disease either prior to entry into service or while off duty or on leave or desertion or unauthorised absence, etc. atttributability should not be accepted unless the disease occurs within the incubation period.

(iv) Diseases due to infections in service -Entitlement to pension will be admitted if the exposure to infection arose from the circumstances of the member's service.

(v) Diseases known to be affected by dietary compulsions - The compulsions of service would also cover such cases as gastric disorders, e.g. gastritis, gastric and duodenal ulcers, where it is established that the member was unable to follow a dietary regime required for his condition. The effect of service in such cases will be limited essentially to the question of aggravation of a pre-existing constitutional condition. This will not normally apply to individuals in sedentary occupation.

(vi) Diseases which rule their course independently of external circumstances - There are certain diseases which would have run the same course whether the individual had been in the Forces or not, e.g. Leukaemia, Hodgkin's disease, etc. (see Annexure sub-para (E). Such cases will not be accepted as aggravated by service unless it is clear that owing to exigencies of service the man did not receive treatment of a satisfactory

> character and standard or such treatment was so delayed as to be less effective than it should have been.

(Clauses (vii) and (viii) relate to veneral diseases, drugs and drinks and being irrelevant for his case are not reproduced here.)

Perusal of clause (b) of Rule 7 would show that it raises a rebuttable presumption that the disease led to individual's discharge or death would ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for military service. This presumption ofcourse, can be rebutted if medical opinion holds that the disease could not have been detected on medical examination prior to acceptance for service the disease will not be deemed to have arisen during service.

7. It is not disputed that in the present case no note of the disease "Neurotic Depression" was when the petitioner was inducted in the army on 6th November, 1985. It is also not disputed that the petitioner was discharged from the military service on account of disease of Neurotic Depression.

Therefore, under first part of clause (b) of Rule 7 a rebuttable presumption would arise that the disease of "Neurotic Depression" had arisen on account of military service.

8. No medical certificate was produced before us by the respondents to show that the medical opinion was that the disease of "Neurotic Depression" could not have been detected on medical examination prior to acceptance of the petitioner in service. Learned counsel for the petitioner, however, wanted us to go through the report of the clinical examination of the petitioner dated 7th October, 1985. Though the copy of the said report was not annexed to the affidavit in reply and was handed in only at the hearing at the request of the learned counsel for the petitioner we have gone through it In the final para of the report the medical opinion is stated thus:

> "Opinion: A case of Neurotic Depression under psychiatric observation since Feb.84 and is in low medical category since July 85. He also had relapses for which he has been given intense treatment.

> At present he is restless. Makes peculiar gestures, talks to himself and has persecutory ideas. He has no self confidence to do simple duties also. Observations in the ward shows him to be preoccupied dull and inactive. The disease is Chronic. The progress is not satisfactory and he should schizoid traits also."

In our view, the medical report dated 7th October, 1985 does not anywhere state that the disease of "Neurotic Depression" from which the petitioner suffered and which was not noted at the time of his entry in service could be anterior to his entering into the service and could not have been detected at the time of acceptance in the service. Further more the medical opinion also does not state that the disease was not attributable to military service.

9. Learned counsel for the petitioner wanted us to go through another letter dated 5th May, 1988 written by the Senior Record Officer to the petitioner to show that the disease was

not attributable to military service. Again this letter is also not annexed to the affidavit and was not produced on record but a copy of it was tendered across the bar at the time of hearing. We also reluctantly went through the copy of the letter dated 5th May, 1988. By this letter the petitioner was informed that his claim for disability pension was rejected on 29th May, 1986 and though he was advised to prefer an appeal against rejection of disability pension, he had not filed the appeal and, therefore, the petitioners claim could not be considered.

10. It is thus clear that neither the medical report dated 7th October, 1985 nor the communication dated 5th May, 1988 anywhere make any reference to any medical opinion that the disease of "Neurotic Depression" suffered by the petitioner was not attributable to the military service; nor do they state that the disease of Neurotic Depression was anterior to service and could not have been detected prior to acceptance of the petitioner in the military service. Thus, the presumption which arises under the first part of clause (b) of Rule 7 that the disease which has resulted

into discharge of a person will be deemed to have arisen in service if no note of it was made at the time of individual's acceptance in military service, is not in any way rebutted by the respondents.

11. Learned counsel for the petitioner invites our attention to the decision of Karnataka High Court in **M.K.Joseph** V**s. Union of India reported in 1998(I)SLR 319.** There also referring to Rule 173 of the Pension Regulations and Rule 7 of the Entitlement Rules the Court conclusion that under Rule 7(b) of Entitlement Rules, it would be presumed that individual's disease had arisen in service if it was not noted at the time of acceptance in service. We are in respectful agreement with the view taken in that decision.

12. For these reasons we are of the view that the claim of the petitioner for medical disability pension could not have been rejected. All the communications informing the petitioner that his claim for medical pension is rejected are, therefore, quashed. The respondents are directed to grant medical

disability pension to the petitioner in accordance with Rule 173 of the Pension Regulations for the Army from the date of his discharge. This exercise shall be completed within a period of four months.

13. Rule is made absolute to the extent above with costs. Arrears shall be paid within four months and current/future pensionary benefits shall be paid to the petitioner regularly every month thereafter.

(D.G.KARNIK J.) **(S.B.MHASE J.)**